



2621 *THW*

09/435,458

United States  
080142-000000US (80021-131)  
Patents

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**IN RE APPLICATION**

Serial Number: 09/435,458  
Filing Date: November 5, 1999  
Priority Date: November 6, 1998 (U.S. appln. no. 60/107,335)  
Group Art Unit: 2621  
Examiner: LU, Tom Y.  
Title: METHOD AND APPARATUS FOR PRODUCING  
A REPRESENTATION OF A MEASURABLE  
PROPERTY WHICH VARIES IN TIME AND  
SPACE, FOR PRODUCING AN IMAGE  
REPRESENTING CHANGES IN RADIOACTIVITY  
IN AN OBJECT AND FOR ANALYZING  
TOMOGRAPHY SCAN IMAGES  
Inventors: CELLER, Anna Malgorzata; NOLL, Dominikus  
Rudolf; FARNCOMBE, Troy Howard; MAEGHT,  
Jean  
Agent's ref: 080142-000000US (80021-131)

Commissioner for Patents  
United States Patent and Trademark Office  
Mail Stop Amendment  
P.O. Box 1450  
Alexandria, VA 22313-1450  
United States

Dear Sir:

**DECLARATION**

I, Dominikus Rudolf Noll, of 29, hameau de Doumenjou, 31650 Lauzerville, France, make oath and say:

1. I am one of the four named inventors of the above-noted United States Patent Application Serial No. 09/435,458.
2. In a non-final Office Action mailed February 7, 2005, the Examiner has cited the following internal research report, of which I am a co-author:

H. H. Bauschke, D. Noll, A. Celler and J.M. Borwein, "An EM-algorithm for dynamic SPECT tomography", CECM (Simon Fraser University) Internal Research Report 997-092, March, 1997.

A copy of this reference (hereinafter referred to as the "Internal Research Report") is attached hereto as Exhibit "A".

3. The Internal Research Report was brought to the Examiner's attention by the applicants' agents in an Information Disclosure Statement filed November 16, 2000, in which the Internal Research Report was listed as reference number "AR" and was expressly described as an "Internal Research Report". A copy of the relevant Information Disclosure Citation form describing this reference, bearing a Patent Office date receipt stamp of November 20, 2000 and the Examiner's initials, is attached hereto as Exhibit "B".
4. The Internal Research Report was prepared in association with the Center for Experimental and Constructive Mathematics ("CECM") at Simon Fraser University, in Burnaby, British Columbia, Canada. Among the co-authors of the Internal Research Report, myself and Heinz Bauschke are Associate Members of the CECM, while Jonathan Borwein was the Founding Director of the CECM.
5. It is my understanding that the policy of the CECM was to maintain internal research reports confidential until after their contents had been otherwise published by the authors, and that all CECM members would have understood this confidentiality policy. It is therefore my understanding that the Internal Research Report was maintained confidential by the CECM and was not disseminated other than to CECM members who would have understood that it was confidential, until after its contents had been otherwise published by the authors.
6. A manuscript corresponding to the Internal Research Report was submitted to the IEEE in March, 1997 and was published in **March, 1999** in H.H. Bauschke et al., "An EM Algorithm for Dynamic SPECT", *IEEE Transactions on Medical Imaging*, Vol. 18, No. 3, March, 1999, pp. 252-261. A copy of the March, 1999 publication is attached hereto as Exhibit "C". This publication was also identified in the Information Disclosure Citation filed by the applicants on November 16, 2000, as reference number "AA", as shown in Exhibit "A" attached hereto.
7. To the best of my knowledge, the Internal Research Report and its contents were not made available to the public more than one year before the **November 6, 1998** filing date of U.S. patent application no. 60/107,335, from which priority is claimed in the aforementioned application no. 09/435,458.

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8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNED AT \_

*Toulon*  
(City or Town)

*France*  
(Country)

this 5<sup>th</sup> day of July, 2005.

  
\_\_\_\_\_  
Dominikus Rudolf Noll

Attachments:

- Exhibit "A": H. H. Bauschke et al., "An EM-algorithm for dynamic SPECT tomography", CECM (Simon Fraser University) Internal Research Report 997-092, March, 1997.
- Exhibit "B": copy of Information Disclosure Citation form showing Exhibit "A" as reference no. "AR" and showing Exhibit "C" as reference no. "AA".
- Exhibit "C": H.H. Bauschke et al., "An EM Algorithm for Dynamic SPECT", *IEEE Transactions on Medical Imaging*, Vol. 18, No. 3, March, 1999, pp. 252-261.